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July 20, 2006

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FIRST CLASS MAIL

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Re: *Texas Tech University v. John Spiegelberg d/b/a Red Raider Outfitter*
Opposition to Application Serial No. 78/620,435
Our Ref. No.: 49304/319796

Dear Sir/Madam:

Enclosed please find a **Notice of Opposition** to the application to register the mark WRECK 'EM TECH (Serial No. 78/620,435). Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Please contact us if you have any questions concerning the enclosed document.

Sincerely,

Alicia Grahn Jones

AGJ

Enclosures

cc: Charlie Henn
Larry Wharton



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TEXAS TECH UNIVERSITY,)	
)	
Opposer,)	In the matter of Application
)	
v.)	Serial No. 78/620,435
)	Mark: WRECK 'EM TECH
)	
)	
JOHN SPIEGELBERG d/b/a RED)	
RAIDER OUTFITTER,)	
)	
Applicant.)	

07/31/2006 KGIBBONS 00000012 78620435

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NOTICE OF OPPOSITION

Opposer Texas Tech University is a general academic teaching institution of the State of Texas, having its principal location at 2500 Broadway, Lubbock, Texas 79409 ("Opposer").

Opposer believes it will be damaged by the registration of the mark WRECK 'EM TECH (Serial No. 78/620,435), and opposes the same pursuant to 15 U.S.C. § 1063, and 37 C.F.R. §§ 2.101 and 2.104(a). Application Serial No. 78/620,435 is currently at issue in a case between the parties pending before the United States District Court for the Northern District of Texas and, therefore, Opposer is filing a Motion to Suspend Proceedings concurrently with this Notice of Opposition.¹ The ground for the opposition are as follows.

1. On information and belief, on June 27, 2006, Applicant John Spiegelberg d/b/a Red Raider Outfitter ("Applicant") filed an application to register the mark WRECK 'EM TECH (Serial No. 78/620,435) ("Applicant's Mark") for use in connection with "clothing and accessories, namely shirts, pants, jackets, shorts, sweat bands, sweat suits, socks, and hats" in

¹ Opposer's Motion to Suspend Proceedings is attached as Exhibit A.

International Class 25. Applicant's trademark was first published for Opposition in the Official Gazette dated June 27, 2006. Thus, Opposer has timely filed this Notice of Opposition.

2. Texas Tech University ("TTU") was founded in 1923, and its academic and athletic programs are well known and respected across the United States. TTU has extensively used and promoted "Texas Tech University" and "Texas Tech" as its name, as well as a trademark and service mark.

3. TTU owns a federal registration for the mark TEXAS TECH UNIVERSITY (Reg. No. 2,511,970) for use in connection with "clothing, namely, shirts, sweatsuits, sweat shirts, sweat pants, t-shirts, caps, hats, jackets, and coats" in International Class 25 and "educational services, namely providing courses of instruction at the university level, and arranging and conducting educational conferences and academic exhibitions; and entertainment services, namely arranging and conducting athletic competitions, athletic tournaments, exhibitions, live performances, and festivals" in International Class 41, registered on November 27, 2001, claiming a date of first use of September 1, 1969.

4. A very common shorthand for referring to TTU is "Tech." In the appropriate context and circumstances, use of the term "Tech" will be perceived by the relevant consuming public as a reference to TTU. TTU's licensees have often used the moniker "Tech" as a means of referring to TTU, TTU's accomplishments, or events in which TTU will be participating.

5. TTU has used the mark WRECK 'EM TECH in connection with its fight song for at least sixty (60) years. A copy of TTU's fight song is attached as Exhibit B. TTU has also licensed use of the WRECK 'EM TECH mark in connection with various goods, including clothing. Opposer's TEXAS TECH UNIVERSITY, TECH, and WRECK 'EM TECH marks are collectively referred to as "Opposer's Marks."

6. As a result of TTU's longstanding and extensive use, Opposer's Marks are symbolic of the extensive goodwill and consumer recognition established by TTU. By virtue of TTU's expenditure of substantial amounts of time, effort and money in advertising and promoting its goods and services under Opposer's Marks, Opposer's Marks have come to identify TTU's athletic and other goods and services.

7. Opposer will be damaged by the registration of Applicant's Mark because the mark and its associated goods so resemble Opposer's Marks and the associated goods and services as to be likely to cause confusion, mistake and deception. Applicant's Mark contains the term "TECH" which is a reference to TEXAS TECH UNIVERSITY. Moreover, Applicant's Mark was derived from Opposer's fight song.

8. Persons familiar with Opposer's Marks are likely to believe erroneously that Applicant's goods are offered by TTU or are authorized, licensed, endorsed or sponsored by TTU, and registration of Applicant's Mark on the Principal Register will be inconsistent with Opposer's rights in the Opposer's Marks.

9. Applicant's applied-for mark also falsely suggests a connection with TTU, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

10. Registration of Applicant's Mark would cause dilution to the distinctiveness of Opposer's Marks by eroding consumers' exclusive identification of these famous marks with Opposer, tarnishing and degrading the positive associations and prestigious connotations of the marks, and otherwise lessening the capacity of the marks to identify and distinguish the goods and services of Opposer.

11. Registration of Applicant's Mark should be refused because the application is being procured by fraud. Specifically, either Applicant knows or should have known that: (1)

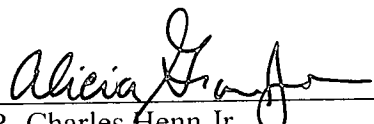
Opposer is the owner of the WRECK 'EM TECH mark, (2) Applicant is not entitled to use the WRECK 'EM TECH mark in commerce; (3) Opposer has the right to use the WRECK 'EM TECH mark in commerce.

12. On information and belief, Applicant's attorney was acting on behalf of Applicant without his authority when Applicant's counsel filed the application to register the mark WRECK 'EM TECH. In related litigation, when asked whether Applicant authorized the application to register Applicant's Mark, Applicant responded "Not to my knowledge, that I can remember of."

13. Enclosed is the PTO-2038 authorizing the credit card payment of the \$300.00 filing fee.

WHEREFORE, Opposer requests that Application Serial No. 78/620,435 be refused registration and this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,


R. Charles Henn Jr.
Alicia Grahn Jones
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1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on 7/20/06.

By:

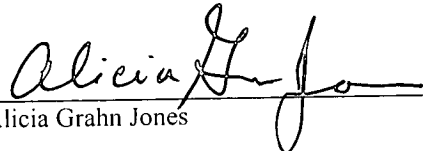

Alicia Grahn Jones

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


TEXAS TECH UNIVERSITY,)	
)	
Opposer,)	In the matter of Application
)	
v.)	Serial No. 78/620,435
)	Mark: WRECK 'EM TECH
)	
)	
JOHN SPIEGELBERG d/b/a RED)	
RAIDER OUTFITTER,)	
)	
Applicant.)	

OPPOSER'S MOTION TO SUSPEND PROCEEDINGS
PURSUANT TO 37 C.F.R. § 2.117(a)

Opposer, Texas Tech University respectfully requests that the Board suspend proceedings in this Opposition pursuant to 37 C.F.R. § 2.117(a). As discussed in further detail in Opposer's Brief in Support, Opposer has filed a civil action in the United States District Court for the Northern District of Texas which will dispose of the issues raised in this opposition proceeding. Therefore, Registrant respectfully submits that this opposition proceeding should be suspended pending disposition of the civil action.

Dated: 7/20/06

Respectfully submitted,


R. Charles Henn Jr.
Alicia Grahn Jones
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1100 Peachtree Street
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By:

Alicia Grahn Jones
Alicia Grahn Jones

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served on Applicant's counsel by depositing a true and correct copy thereof with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Erik J. Osterrieder, Schubert Osterrieder & Nickelson PLLC, 6013 Cannon Mtn. Dr., S14, Austin, Texas 78749 on 7/20/06.

By:

Alicia Grahn Jones
Alicia Grahn Jones

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TEXAS TECH UNIVERSITY,)	
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JOHN SPIEGELBERG d/b/a RED)	
RAIDER OUTFITTER,)	
)	
Applicant.)	

OPPOSER'S BRIEF IN SUPPORT OF ITS MOTION TO SUSPEND

Opposer, Texas Tech University ("TTU") respectfully requests that the Board suspend proceedings in this Opposition pursuant to 37 C.F.R. § 2.117(a).

I. BACKGROUND

On June 27, 2006, Applicant John Spiegelberg d/b/a Red Raider Outfitter ("Applicant") filed an application to register the mark WRECK 'EM TECH (Serial No. 78/620,435), which is the subject of this opposition proceeding.¹

On August 24, 2005, TTU filed a civil action against Applicant alleging trademark infringement and dilution, unfair competition, breach of contract, and related causes of action under state law (the "Civil Action").² The Civil Action will address several issues including TTU's rights in the WRECK 'EM TECH mark. The Civil Action was filed in the United States District Court for the Northern District of Texas where Applicant resides. Thus, Petitioner can claim no prejudice or burden stemming from litigation in this forum. The Civil Action will

¹ TTU's Notice of Opposition is being filed concurrently with this Motion to Suspend.

² TTU's complaint against Applicant is attached as Exhibit A.

dispose of the issues raised in this opposition, and TTU therefore seeks suspension of these proceedings.

Applicant notes that Cancellation No. 92044727 filed by Applicant, which concerns TTU's Registration No. 2,433,675 for the Raider Red Design mark, was suspended on January 13, 2006 pending disposition of the Civil Action.

II. ARGUMENT

The Board has the power to suspend proceedings in favor of a pending civil action pursuant to 37 C.F. R. § 2.117(a), which provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

This Board regularly has exercised this power in the interests of promoting judicial economy and conserving resources. See Vining Indus., Inc. v. Libman Co., 1996 TTAB LEXIS 455, at *6 (T.T.A.B. July 16, 1996) (suspending Board proceedings "in the interest of judicial economy and consistent with [the Board's] inherent authority to regulate [its] proceedings to avoid duplicating the effort of the court and the possibility of reaching an inconsistent conclusion"); Tokaido v. Honda Assocs., Inc., 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973) ("[N]otwithstanding the fact that the Patent Office proceeding was the first to be filed, it is deemed to be the better policy to suspend proceedings herein until the civil suit has been finally concluded."); Townley Clothes, Inc. v. Goldring, Inc., 100 U.S.P.Q. 57, 58 (Comm'r Pat. 1953) ("[I]t would not seem to be in the interests of 'judicial economy' for the parties to proceed in two forums. . . .").

This opposition should be suspended because proceedings in the Civil Action will conclusively determine TTU's rights in the WRECK 'EM TECH mark, and therefore will be

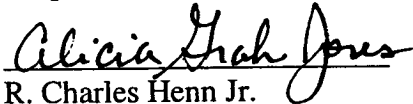
dispositive of all issues raised in this proceedings. See Tokaido v. Honda Assocs., Inc., 179 U.S.P.Q. at 862 (“[W]hile a decision of the District Court would be binding upon the Patent Office, a decision by the Trademark Trial and Appeal Board would only be advisory in respect to the disposition of the case pending in the District Court.”); see also Sam S. Goldstein Indus., Inc. v. Botany Indus., Inc., 301 F. Supp. 728, 731, 163 U.S.P.Q. 442, 443 (S.D.N.Y. 1969) (noting that PTO “findings would not be res judicata in this [civil action]” and denying motion to stay district court proceedings).

III. CONCLUSION

For the foregoing reasons, TTU respectfully submits that this opposition proceeding should be suspended pending disposition of the Civil Action.

Dated: 7/20/06

Respectfully submitted,


R. Charles Henn Jr.

Alicia Grahn Jones
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By: Alicia Grah Jones
Alicia Grah Jones

CERTIFICATE OF SERVICE

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By: Alicia Grah Jones
Alicia Grah Jones

EXHIBIT B

TEXAS TECH UNIVERSITY
FIGHT SONG



Fight, Raiders, Fight! Fight, Raiders, Fight!
Fight for the school we love so dearly.
You'll hit 'em high, you'll hit 'em low.
You'll push the ball across the goal,
Tech, Fight! Fight!

We'll praise your name, boost you to fame.
Fight for the Scarlet and Black.
You will hit 'em, you will wreck 'em.
Hit 'em! Wreck 'em, Texas Tech!
And the Victory Bells will ring out!

Written by Carroll McMath

Approved for use through 02/28/2006. OMB 0651-0043

United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Credit Card Expiration Date: 08/06

Name as it Appears on Credit Card: William Brewster

Payment Amount: \$ (US Dollars):	\$300.00
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Description of Request and Payment Information:

NOTICE OF OPPOSITION

☐ Patent Fee

Application No.

Patent No.

Attorney Docket No.

49304/319796

☐ Patent Maintenance Fee

Application No.

Patent No. _____

☒ Trademark Fee

Application No.

78/620,435

Registration No.

Identify or Describe Mark

WRECK 'EM TECH

☐ Other Fee

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